IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 198 OF 2005

Tukaram Govind Gawade
(since deceased through LRs.)
Rajaram Tukaram Gawade & ors. ... Appellants.

Versus.

Vishnu Sambha Parad & others. ... Respondents.

Shri Rahul P.Walvekar i/by Shri D.S.Sawant for the Appellants.

Ms.Shama N.Ghitekar i/by Shri S.B.Shetye for the Respondent Nos.1 and 2.

CORAM : ABHAY S. OKA, J.

DATED : 27th April, 2005.

P.C.:

1. Heard the learned Counsel for the parties.

2. The Appellate Court has held that in view of the reply given by the original Defendants to the notice dated 9th January 1977 sent by the original Plaintiffs, it was necessary for the Appellants to issue notice under section 111(g) of the Transfer of Property Act, 1882. It is not in dispute that in the reply to the said notice the Respondents denied title of the Appellants. Therefore, service of notice informing the Respondents of the intention of the Appellants to determine the tenancy was mandatory.

3. The original Plaintiff has obtained an assignment of mortgage from mortgagee. On the date on which the

assignment was obtained the period of limitation for filing a suit for redemption of mortgage by the mortgagor had not expired. Therefore, the Appellate Court has held that on that date the original Plaintiff did not acquire ownership as he had stepped into the shoes of the mortgagee.

4. Having heard the learned Counsel for the parties, I find that there is no error in the findings recorded by the Appellate Court. No substantial question of law arises. The Second Appeal is dismissed with no order as to costs.

Judge.